85350-9
No. 38411-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

PHILADELPHIA INDEMNITY INSURANCE COMPANY

Appellant

v.

VISION ONE, LLC, VISION TACOMA, Inc., D&D CONSTRUCTION, INC. and BERG EQUIPMENT AND SCAFFOLDING CO., INC.

Respondents

REPLY AND RESPONSE BRIEF OF APPELLANT

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I. ARGUMENT

The relevant issues are less complicated than Vision One suggests. The judgments entered by the trial court must be reversed due to the following errors of law:

(1) The trial court erred in refusing to instruct the jury on efficient proximate cause principles and then apply the jury's decision to interpret the policy;

(2) The trial court misinterpreted the resulting loss exception to the faulty workmanship exclusion;

(3) The trial court erred as a matter of law when it declined to dismiss Vision One's Breach of Contract claim; and

(4) With respect to damages and attorney fees, the trial court erred in (a) failing to limit "delay" damages to 90 days; (b) awarding Vision One $50,000 under the Consumer Protection Act ("CPA"); and (c) awarding Vision One attorney fees for fees associated with the defense of bodily injury claims and for improperly documented and inefficiently performed activities by its counsel.

For the reasons that follow, Vision One offers no persuasive argument to justify these decisions by the trial court.

A. Efficient proximate cause principles are rules of law and policy construction. They are not policy provisions. (Assignment of Error no. 1).

Vision One argues that by raising the efficient proximate cause rule, Philadelphia was attempting to change the grounds upon which it denied coverage. (Resp. Br. 33-34.) Vision One is mistaken. Efficient proximate cause is a legal principle. It is a judicially-developed rule of contract construction. See *Sunbreaker Condo. Assoc. v. Travelers Ins. Co.*, 79 Wn. App. 368, 375, 901 P.2d 1079 (1995) *rev. den.* 129 Wn.2d 1020 (1996). No Washington court has suggested, much less held, that the efficient proximate cause rule must be cited in an insurer's coverage denial letter.

WAC 284-30-380(1) prohibits insurers from denying a claim based upon a specific policy provision, condition, or exclusion unless reference to the provision, condition, or exclusion is included in the insurer's written denial. Philadelphia did exactly that in referencing the defective design and faulty workmanship exclusions, among other policy provisions. The efficient proximate cause rule cannot possibly be characterized as a "policy provision, condition or exclusion" to foreclose

its application in this case. It was plain error for the trial court to so rule, and incorrect for Vision One to defend that ruling on appeal.[1]

The Washington State Supreme Court adopted the efficient proximate cause rule in *Graham v. Public Employees Mut. Ins. Co.*, 98 Wn.2d 533, 538, 656 P.2d 1077 (1983). In *Graham* and cases decided thereafter, it has become established law that the rule applies only where two or more distinct perils operate to cause a loss and the policy covers one or more, but not all, perils. See *Kish v. Ins. Co. of North Am.*, 125 Wn.2d 164, 170, 883 P.2d 308 (1994). Identifying which peril was the efficient, or predominant, cause of loss is a question of fact. Determining the existence and extent of coverage based upon the efficient proximate cause is a question of law.

After reviewing Vision One's claim, Philadelphia concluded that the loss was caused by two perils; faulty workmanship and defective design. Based on the exclusions in the policy, Philadelphia denied coverage because in its view neither of the two perils were covered. From inception, Philadelphia did not view this claim as one involving a

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[1] Vision One argues that Philadelphia was obliged to identify the predominant cause of the collapse to comply with WAC 284-30-330(13). Resp. Br. 44. Vision One is mistaken. Philadelphia told Vision One that the cause of loss was defective design and faulty workmanship. This was a reasonable explanation based on the facts and policy provisions. Sorting out which of those causes was efficient proximate cause, if any such undertaking was to be made, would have been a factual determination for the jury. *Graham*, 98 Wn. 2d at 539.

potentially covered cause of loss. Accordingly, it had no reason to raise or discuss the efficient proximate cause rule. The rule only became an issue when Vision One sought a pre-trial order to the effect that if the collapse was caused by an excluded peril and a non-excluded peril, Vision would have coverage. 7/18 RP 20-21. Vision One argues that Philadelphia conceded that coverage would exist if the collapse was caused by both covered and non-covered events. This argument is groundless. If anything, provisions of Philadelphia's policy make clear that coverage will not exist when covered and non-covered events combine to cause a loss. The policy states:

> *We will not pay for loss or damage caused by any of the excluded events described below. Loss or damage will be considered to have been caused by an excluded event if the occurrence of that event:*
>
> 1. *Directly and solely results in loss or damage; or*
>
> 2. *Initiates a sequence of events that results in loss or damage, regardless of the nature of any intermediate or final event in that sequence.*

CP 5971.

Philadelphia relied on the "directly and solely" language when it denied coverage for faulty workmanship and defective design. At the hearing on Vision One's motion, Philadelphia explained that if the jury determined there was more than one cause of the collapse then a different analysis would apply and the jury must determine which was the efficient proximate cause. 7/18 RP 16-18.

Although the trial court did not rule directly on the meaning and effect of the "directly and solely" provision, the trial court found that if there was an excluded cause of the loss and a non-excluded cause of the loss, Vision One would have coverage. 7/18 RP 21. Philadelphia sought reconsideration but its motion was denied. Philadelphia has assigned error to the trial court's denial. Clearly, Philadelphia preserved error on this point. Vision One's argument to the contrary is unfounded.

Vision One also claims it would have been unfairly prejudicial to apply the efficient proximate cause rule because it spent two years litigating faulty workmanship and defective design, Philadelphia's stated grounds for denial. Vision One mistakes the function of efficient proximate cause in coverage litigation. The efficient proximate cause rule is not itself a cause of loss. It is a legal principle that identifies

which cause among multiple causes, some covered and some not, is the predominant cause of a loss.

Moreover, Vision One cannot credibly claim prejudice or surprise. Causation was a central issue in the litigation from its inception. Vision One disclosed no fewer than 13 expert witnesses, at least six of whom were prepared to testify on causation. These experts included engineers, architects, and construction professionals who Vision One represented to have formed opinions based on the testimony, reports and other communications of the parties and non-parties, their review of plans and shoring drawings, and other facts and circumstances surrounding the incident. Vision One clearly was as prepared as Philadelphia to argue about efficient proximate cause at the time of trial.

Finally, Vision One argues that Philadelphia cannot argue about efficient proximate cause because Philadelphia's engineering expert testified that the collapse would not have occurred absent the defective workmanship. Resp. Br. 41. Vision One ignores the context of this testimony. Philadelphia's witness did not testify that faulty workmanship was the predominant cause of the collapse only that the collapse would not have occurred in its absence. Moreover, by the time the engineer's testimony was elicited, the trial court had already determined that faulty workmanship caused the loss so determination of

a predominant cause was nothing the jury was asked to consider. The testimony of Philadelphia's expert was offered for damages-related purposes and reasons other than establishing causation. Again, the larger question of causation should have been left for the jury to decide. The trial court improperly removed this inquiry from the jury's consideration and in so doing committed reversible error.

B. The resulting loss exception to the Faulty Workmanship exclusion does not restore coverage for Vision One's collapse losses. (Assignment of Error no. 2 and 3).

Investigations following the slab collapse revealed that the cause of the loss was faulty workmanship and inadequate design. Both perils are expressly excluded from coverage. The faulty workmanship exclusion contains an exception for "resulting loss," but the exception is triggered only if a factual determination first has been made that faulty workmanship was the efficient proximate cause of the loss. Here, the trial court took that decision away from the jury. Despite evidence of both inadequate design and faulty workmanship, the trial court decided on the eve of trial that the loss was caused by faulty workmanship.[2] This was fundamental error. Had the jury decided that inadequate

[2] Contrary to Vision One's assertion, Philadelphia did not ask the trial court to decide coverage by pre-trial motion. Rather, Philadelphia asked the court to determine whether the resulting loss clause would apply to revive coverage if the jury found the proximate cause of the loss was faulty workmanship. CP 6355.

design was the efficient proximate cause of the loss, further consideration of the "resulting loss" exception to the faulty work exclusion would have been unnecessary.

Even if faulty workmanship is considered the cause of the loss, the trial court erred in holding that the "resulting loss" exception applied. The resulting loss clause provides that if a specified uncovered event takes place, any resulting loss which is otherwise covered by the policy will remain covered. The uncovered event itself, however, is never covered. *McDonald v. State Farm*, 119 Wn.2d 724, 732, 837 P.2d 1000 (1992). Here, the trial court concluded the collapse of the shoring equipment was separate and distinct from the collapse of the concrete and that the concrete was covered as a "resulting loss." CP 7099-7100. The trial court's reasoning, and Vision One's attempt to justify it, are unfounded.

Vision One was building a parking garage floor. This project required a system of shoring, forms, and concrete. The shoring was installed to give support and shape to the concrete as it cured. It served no other or independent purpose. Moreover, the wet concrete could not support itself above the ground, therefore, the shoring if anything, was vital to the proper functioning of the concrete. The design and installation of the shoring was inextricably intertwined with the concrete

it was meant to support. The collapse occurred only when the two elements of the construction project – the shoring and the concrete – were combined. The concrete was not damaged as a result of the collapse but rather in the course of a collapse it helped bring about. Had the collapse resulted in discrete property damage to the project other than damage to the concrete slab (e.g., had the collapse caused a fire, or ruined construction equipment) there may have been a resulting loss. Nothing of the kind occurred here. See *LaQuilla Construction v. Travelers Indemnity Company of Illinois*, 66 F. Supp 2d 543, 546, 1999 US Dist. LEXIS 14827 (1999) citing *Allianz Ins. Co. v. Impero*, 654 F Supp 16, 18 (E.D. Wash 1986). Other cases cited by Vision One on this issue actually support Philadelphia's analysis. In *Narob Dev. Corp v. Insurance Co. of North Am.*, 631 N.Y.S.2d 155 (1995), the court denied coverage under a defective workmanship exclusion for a defectively built retaining wall in so much as there was "no collateral or subsequent damage or loss as a result of the collapse." The same is true here.

Similarly, in *Alton Ochsner Medical Fnd. v. Allendale Mut. Ins. Co.*, 219 F.3d 501 (5th Cir. 2000), the Court held that for loss or damage to trigger the ensuing loss exception to the faulty workmanship exclusion, physical damage that is "distinct and separable" from the excluded damage must occur. In *Alton*, the insured had not identified

any 'resulting damage' because "the only cost that would be associated with restoration of the structural integrity of the (subject) tower is the cost of repairing the design and construction deficiencies of the foundation." *Id. at 505.* Similarly, Vision One did not suffer any subsequent loss which was "separate and distinct" from the collapse caused by inadequate design or faulty workmanship.

For these reasons the trial court erred in holding that the resulting loss exception restored coverage, even if faulty workmanship is assumed to be the cause of the loss.

C. Vision One's release of Berg impaired Philadelphia's recovery rights. (Assignment of Error no. 4).

Vision One argues that the trial court correctly refused to dismiss Vision One's Breach of Contract claim based on the Impairment of Recovery Rights provision because Philadelphia waived it by denying coverage. Resp. Br. 22-23. By Vision One's logic, a denial of coverage would automatically void the contract for all purposes. Washington law does not support this conclusion. Waiver is the intentional and voluntary relinquishment of a known right. See *Mutual of En. v. USF Ins. Co.*, 164 Wn.2d 411, 426, 191 P.3d 866 (2008). Philadelphia relinquished none of its policy-based rights and defenses. The cases cited by Vision One deal more with estoppel and do so in the

context of subrogation. Subrogation is an equitable doctrine that generally allows an insurer to recoup from a tortfeasor what the insurer has paid to its insured on a covered claim. *Touchet Vly. Grain Growers v. Seibold Gen. Constr.*, 119 Wn. 2d 334, 341, 831 P.2d 724 (1992). The Impairment provision deals with more than subrogation; it encompasses circumstances such as are presented here, before a right of subrogation arises, where the insured releases a tortfeasor and thereby impairs "potential recovery rights."

The operation and effect of the Impairment provision is clear. Vision One was free to settle with Berg but in doing so it should have forfeited contractual rights under the policy. Vision One cannot be allowed to sue Philadelphia for Breach of Contract without having to deal with Philadelphia's contractual defense based on the Impairment clause. Vision One cannot fairly have it both ways. By ignoring the effect of the Impairment clause, the trial court stripped Philadelphia of a vital contractual right. Indeed, had the trial court enforced the Impairment clause, all contractual issues (including efficient proximate cause and resulting loss) would have been mooted and the jury would have had nothing to consider but liability and damages for alleged bad faith.

Vision argues that "Philadelphia's bad faith should estop it to complain that Vision resorted to self help... ." Resp. Br. 24. This is a curious argument. Vision One itself notes that a finding of bad faith does not estop a first party insurer from denying coverage. *Coventry Assocs v. Am. States Ins. Co.*, 136 Wn. 2d 269, 285, 961 P2.d 933 (1988). Moreover, Vision One settled with Berg before bad faith issues were tried so it is unclear what estops Philadelphia from asserting the Impairment clause as a defense to the Breach of Contract claim.

By denying Philadelphia's motion to dismiss Vision One's Breach of Contract claim, the trial court erred as a matter of law. Vision One was free to settle with Berg but in doing so it should not have been allowed to escape the contractual consequences arising from the Impairment clause of the policy.[3]

D. Philadelphia's argument limiting recovery under the Extra Expense Endorsement to 90 days was properly preserved and consistent with the express terms of the Endorsement. (Philadelphia's Assignment of Error no.5(a)).

Vision One claims Philadelphia waived any argument about the Extra Expense endorsement because it did not object to the instruction given to the jury. Resp. Br. 47.

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[3] Vision One argues that Philadelphia is not at risk of double recovery but this promise is hollow. There is no assurance that the proceeds will be allocated to

Vision One misunderstands Philadelphia's argument. Philadelphia is not arguing about the instruction. Rather, Philadelphia has assigned error to the trial court's failure to interpret this policy language (which served as the basis for the instruction) and thereby limit Vision One's damages to the 90 days that Vision One itself argued was the actual construction delay caused by the concrete collapse. 9/24 RP 354, 21-221, 377, 8-20.

The evidence offered by Vision One and Philadelphia established the period of delay to be 90 days or less. Philadelphia moved for a directed verdict and judgment as a matter of law limiting delay damages to no more than 90 days. The trial court denied Philadelphia's motions. Ultimately, the jury awarded Vision One over seven months of delay damages consisting of additional insurance premiums, advertising/promotion expenses and real estate/property taxes. The trial court should have limited coverage to 90 days. In failing to do so, committed reversible error.

E. The trial court should not have awarded Vision One $50,000 for the CPA violations. (Assignment of Error 5(b)).

Vision One argues Philadelphia is precluded from assigning error to the trial court's award of $50,000.00 for CPA violations on the

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property losses for which Philadelphia may owe coverage as opposed to personal

grounds that Philadelphia did not object to the verdict form. Vision One's analysis is off point. RCW 19.86.090 allowed the trial court to increase damages by as much as three times actual damages, up to $10,000.00.[4] The trial court's discretion in this regard has nothing to do with the verdict form. Vision One contends (mistakenly) that RCW 19.86.090 contemplates $10,000.00 per violation and the jury found five CPA violations. This has nothing to do with the verdict form. It is a question of law. Philadelphia objected to the jury award of $50,000.00 as contrary to the applicable statute, prior to the trial court's entry of judgment. CP 7374-75. The issue is properly preserved.

Vision One's claim that RCW 19.86.090 permits a court to awarded exemplary damages for CPA violations is based on a misreading of the statute. The statute reads, "...such increased damage award for violation of 19.86.020 may not exceed ten thousand dollars." Nothing in the statute suggest that the cap applies to each violation yet the jury awarded, and the trial court approved, a judgment including enhanced damages of $10,000 for each of five CPA violations. This is clear legal error.

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injury claims brought against Vision One.

[4] RCW 19.86.090 was amended in several respects in 2009. One amendment increased the amount by which a court may increase a damage award to $25,000. The

Provisions of the CPA other than RCW 19.86.090 do include a "per violation" standard. In actions brought by the Attorney General under RCW 19.86.140, the Legislature had made clear its intent to allow a court to increase damages for each CPA violation that is established. RCW 19.86.090 contains no such standard. Accordingly the trial court erred in construing RCW 19.86.090 as basis to award enhanced damages of $50,000. If such damages were appropriately added at all, they should have been limited to $10,000 in total.

F. The trial court erred in its award of attorneys fees. (Assignment of Error no. 5(c)).

Vision One argues Philadelphia "should have been required, after the jury made the bad faith findings, and should be required on appeal, to show that Vision's fees and expenses were incurred unreasonably." Res. Br. 51. Vision One misunderstands where the burden lies.

Under Washington law, Vision One was required to show that its fees were reasonable. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597-99, 675 P.2d 193 (1983). The trial court expressly ordered Vision One to segregate amounts attributable to unrelated matters, unsuccessful theories and otherwise non-compensable tasks for which Philadelphia should not be required to pay. CP 12327-28. In

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amendment does not affect this case. It is notable however that the Legislature did not

response, Vision One trimmed its $2.47 million dollar fee petition by $120,000.00 and stated that it could not perform the required segregation with precision in light of the "block billing" format. Yet "block billing" is the format Vision One chose. Vision One should not be rewarded with a lightened burden because its chosen format does not lend itself to segregation. Moreover, Vision One's acknowledgment that it improperly included $120,000.00 in its original petition casts doubt on the reasonableness of the remaining entries. Philadelphia established cause to reduce Vision One's petition to $707,650.00 if the Judgments are upheld.

With respect to the Gemini portion of its fee petition, the trial court found that the "fault" issues raised by the personal injury claims were "inextricably intertwined with the work necessary to address issues created by Philadelphia's reliance on the "sole cause exclusions" and the consequent focus on collapse-causation issues." Resp. Br. 52. With due respect to the trial court, this reasoning is not rigorous. The fact that there were overlapping issues in the Philadelphia litigation and the personal injury litigation does not mean all such fees are arbitrarily chargeable to Philadelphia. Gemini owed Vision One independent

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amend the RCW 19.86.090 to include a "per violation" standard.

duties. Neither it nor Vision One should benefit by sweeping fees fairly attributable to the personal injury claims into the litigation between Vision One and Philadelphia.

The trial court abused its discretion in awarding Vision One the fees incurred by Gemini. Philadelphia respectfully requests this court eliminate the $1,011,084.59 of fees awarded to Vision One should the Judgments be affirmed.

II. PHILADELPHIA'S RESPONSE TO VISION ONE'S CROSS - APPEAL

A. The trial court properly concluded the policy excluded coverage for consequential losses beyond those specifically identified in the Extra Expense Endorsement.

Vision One urges this Court to remand for trial the issue of "whether lost profits that Vision was not permitted to prove, are ones it incurred because of the slab collapse and project delay." Resp. Br. 56. Vision One fails to articulate how this assignment of error was preserved or set forth the appropriate standard of review. This Court should deny review of Vision One's claimed error. RAP 2.5(a).

In any event, Vision One's argument lacks merit. The policy limits coverage to "direct physical loss to Covered Property caused by or resulting from any of the Covered Causes of Loss." CP 5973. Loss is defined as "accidental loss or damage." CP 5979. Except as

addressed in specific provisions, the policy applies to damage for physical events, not consequential losses indirectly attributable to such events. Indeed, the policy expressly excludes consequential losses:

> (2) We will not pay for a loss caused by or resulting from any of the following:
>
> > (a) Delay, loss of use, loss of market, or any other consequential losses.

CP 5977.

The only exception to this rule is set forth in the Extra Expense Endorsement which allows for recovery of up to $1 million for six specific categories of loss,[5] if the project is delayed beyond the scheduled date of completion. At trial, and again on appeal, Vision contended that Philadelphia must pay for all the financial consequences it suffered as a result of the collapse. This position ignores the fact that the policy's fundamental grant of coverage extends to "direct physical loss." The only financial consequential loss that is covered is what is allowed through the Extra Expense Endorsement.

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[5] Those six items include (1) construction loan interest in financing under the Construction Loan Agreement; (2) real estate and property taxes on the construction at the project site; (3) architect, engineering and consultant fees; (4) legal and accounting fees; (5) insurance premium for the Builder's Risk Coverage Form; and (6) advertising and promotional expenses. CP 5985.

The trial court specifically held that the Extra Expense Endorsement provided $1 million dollars in coverage for six specific categories of expense, but beyond those six categories Vision had to "...find someplace else in the policy (where) it's covered...." 9/16 RP 305-06; CP 7105. In sum, the trial court correctly rejected Vision One's argument on these point and this Court should do the same.

B. The trial court correctly refused to award Vision One prejudgment interest on Extra Construction Loan Interest and Advertising and Promotional Expenses.

Vision One argues it should have been awarded prejudgment interest for extra construction loan interest expense and extra advertising and promotional expenses, in the amount of $128,817.00. Resp. Br. 57. Vision One's argument is unsupported by Washington law.

Pre-judgment interest is awardable only when the claim is "liquidated or readily determinable." *Hansen v. Rothaus*, 107 Wn.2d 468, 472-73 (1986). A liquidated claim is one where the evidence furnishes data which, if believed, would allow computation of the amount of a claim with precision and without reliance on opinion or discretion. See *Prier v. Refrigeration Eng'g Co.*, 74 Wn.2d 25, 32, 442 P.2d 621 (1968).

With respect to the construction loan interest claim, Vision One's own expert (Paul Pederson) testified that his calculations were based on assumptions for which he had no substantive support.

> Q: ... Are there any assumptions upon which you've had to rely, for which you don't have actual paper backup, in the form of invoices or anything, payroll stubs, et cetera?
>
> A: Yes, we had to make an assumption as to what would have happened under the bank loan, in terms of the interest. Obviously, we can't ---there's no substantive support for what would have happened in terms of the borrowing, because it didn't happen because of the collapse, timing of the borrowings.
>
> Q: Okay.
>
> A: In other words, we knew what the outstanding loan balance was going to be; in other words, the total amount. And we knew that the constructions costs were going to be and we assumed that after the collapse they occurred on a pro rata or equal basis. So that's an assumption that has no document other than the ones I've described. That does require an assumption, yes.

9/30 RP 861-862.

Because the construction loan expense cannot be computed without resort to discretion, opinion and judgment, there is no appropriate basis for prejudgment interest.

Similarly, Vision One's claimed sales and marketing expenses were based on discretionary averages and calculations. Philadelphia's expert, Paul Sutphen, testified:

> A: Well, they took their actual sales and marketing expenses that they incurred through August of 2008 and then *they project an additional amount*, which I don't know how long that is expect to go for, it's just a dollar amount. And then they compared the total of those two numbers to their budget. The difference being what they have incurred through August of 2008 *through a projected amount*, minus the budget. That total is $805,000.
>
> And then somehow, again, I don't understand, how Mr. Pederson did it, but he came up with $305,816, which I take it represents the eight-month period between October 1, 2006 and May 31 of 2007.

10/14 RP 28-29.

Vision One offered no contradictory evidence that would support a precise and non-discretionary calculation of these expenses. Accordingly, the amount claimed for sales and marketing also is an unsuitable basis for awarding prejudgment interest.

Notably, without assigning error to the trial court's order on post-judgment interest, CP 12229-30, Vision One claims that it is entitled to 12% post-judgment interest on the jury's entire award, retroactive to October 21, 2008. Resp. Br. 57. This is wrong. The

trial court found that Vision One was only entitled to 12% interest on $969,700.00 of the principal amount of the judgment and on the $14,848.00 in pre-judgment interest. CP 12229-30. As to the balance of the judgment ($178,728.00) and the Consumer Protection Act claim ($50,000), the trial court found that interest accrued at only 5.122% because such claims sound in tort. Philadelphia asks that this Court uphold the trial court's ruling on applicable rate of post-judgment interest.

III. CONCLUSION

The trial court's refusal to follow principles of efficient proximate cause materially prejudiced Philadelphia's presentation of its defense. Further, the court improperly interpreted the resulting loss clause and effectively told the jury what conclusion to reach on causation. The errors of the trial court were substantial and require reversal of the judgment.

Additionally, by refusing to enforce the Impairment of Recovery Rights clause, the trial court undermined Philadelphia's contractual right to be excused from policy obligations following Vision One's settlement with Berg. Philadelphia respectfully requests this Court reverse the trial on this critical issue.

As to Vision One's cross-appeal, the trial court properly concluded the policy excluded coverage for consequential losses beyond those specifically identified in the Extra Expense Endorsement. Similarly, the trial court correctly refused to award Vision One prejudgment interest on Extra Construction Loan Interest and Advertising and Promotional Expenses. Philadelphia respectfully requests this Court affirm the trial court's rulings.

Respectfully submitted this 14h day of January, 2010.

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